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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/021,929	12/13/2001	Katrina G. Desroches	PGI6044P0271US	2205

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WOOD, PHILLIPS, KATZ, CLARK & MORTIMER
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EXAMINER

TORRES VELAZQUEZ, NORCA LIZ

ART UNIT PAPER NUMBER

1771

DATE MAILED: 11/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/021,929

Applicant(s)

DESROCHES ET AL.

Examiner

Norca L. Torres-Velazquez

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 September 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12, 15 and 18-22 is/are pending in the application.
- 4a) Of the above claim(s) 1-11 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 12, 15 and 18-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Claims 1-11 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on April 08, 2004.
2. Claims 13, 14, 16 and 17 have been canceled by Applicants in amendment filed September 13, 2004.

Response to Arguments

3. Applicant's arguments filed September 13, 2004 have been fully considered but they are not persuasive.
 - a. Applicants have amended claims 12, 15 and 18-22 to include process limitations and argue that the Weinle et al. (4,840,832) and the Zeng et al. (2002/0160682) references fail to teach or suggest a molded construct wherein a specific thermal history is created to enhance physical properties of the resultant article.

Applicant's arguments are not commensurate in scope with the claims, since no properties are being claimed and there is no evidence of record that the product of WEINLE et al. is different from the product claimed herein.

It is the examiner's position that the molded construct of the WEINLE et al. is identical to or only slightly different than the molded construct prepared by the method of the claim(s), because both molded construct are made by a fibrous matt and/or pre-form that uses staple length fibers, sheath-core bicomponent fibers with a polyester core

component and a co-polyester sheath component as a binder fiber, the molded article shows stiffness for use in automotive applications). Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or an obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 227 USPQ 964, 966 (Fed. Cir. 1985). The burden has been shifted to the applicant to show unobvious differences between the claimed product and the prior art product. *In re Marosi*, 218 USPQ 289, 292 (Fed. Cir. 1983). The WEINLE et al. either anticipated or strongly suggested the claimed subject matter. It is noted that if the applicant intends to rely on Examples in the specification or in a submitted Declaration to show non-obviousness, the applicant should clearly state how the Examples of the present invention are commensurate in scope with the claims and how the Comparative Examples are commensurate in scope with the WEINLE et al. reference.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Art Unit: 1771

5. Claims 12, 15 and 18-22 are rejected under 35 U.S.C. 102(b) as being anticipated by WEINLE et al. (US 4,840,832) and further evidenced by ZENG et al. (US 2002/0160682 A1) as stated in prior action.

WEINLE et al. discloses a textile-based product for use as a headliner that is formed from a batt of polymeric fibers compressed and molded into the desired headliner shape. (Column 1, lines 67-68 through Column 2, lines 1-2) The polymeric fibers of the batt preferably include potentially adhesive binder fibers which are thermally activated during the molding of the batt to bond together the fibers of the batt at their crossover points, thereby maintaining the batt in its molded shape while providing resiliency and flexibility to the batt. The reference teaches the use of bicomponent fibers having a relatively low melting polymer binder component and a higher melting polymer strength component as binder fibers. (Column 2, lines 9-17) The reference teaches the use of a sheath-core bicomponent construction wherein the core is formed of a relatively high melting polyethylene terephthalate (PET) polymer and the sheath comprises a PET copolymer having a much lower melting temperature and which exhibits thermoplastic adhesive and thermoformability properties when heated to a temperature of about 170 to 200 degree C. (Column 4, lines 24-31) WEINLE et al. further teaches the use of staple length fibers. (Column 4, lines 50-51) WEINLE et al. also teaches applying heat at a temperature and for a time sufficient to activate the potentially adhesive characteristics of the thermoplastic binder fibers, molding and cooling the batt. (Column 5, lines 65 through Column 6, lines 1-5)

The reference further teaches the steps involved in producing the nonwoven batt that involves blending the textile staple fibers, than formed into a web by air-laying, garneting or

Art Unit: 1771

carding, the web may be crosslapped, optionally needled to form a coherent self-sustaining batt or alternatively, heat stabilized. (Refer to Column 5, lines 45-62)

It is the Examiner's interpretation that the nonwoven batt taught by WEINLE et al. equates to the fibrous mat and/or pre-form of the present invention and the headliner formed by molding in WEINLE et al. equates to the presently claimed molded construct. It is further noted that the WEINLE et al. reference teaches the use of those materials described by Applicants in the Specification. (i.e. staple length fibers, sheath-core bicomponent fibers with a polyester core component and a co-polyester sheath component as a binder fiber, mechanical entanglement for pre-consolidation). With regards to claims 20-22, referring to the use of the molded construct as an appliance facing, an acoustic dampening shield and a domestic furnishing, it is noted that the use of acoustical insulation for vehicles such as the one described by WEINLE et al. is also used in applications such as appliances and heating, ventilating and air conditioning equipment, and in industrial applications, in which an important attribute of such insulation products is good acoustical and thermal performance. (As evidenced by ZENG et al. US 2002/0160682 A2)

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

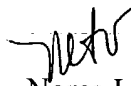
Art Unit: 1771

CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Norca L. Torres-Velazquez whose telephone number is 571-272-1484. The examiner can normally be reached on Monday-Thursday 8:00-4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Norca L. Torres-Velazquez
Examiner
Art Unit 1771

November 23, 2004